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WRITTEN TESTIMONY OF
THE AMHERST ALLIANCE

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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DURING

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RICHMOND FIELD HEARINGS

Federal Communications Commission
Office of the Secretary

ON FOUR MEDIA OWNERSHIP DOCKETS

MB Docket 02-277

2002 Biennial Regulatory Review
Of The Commission's Broadcast
Ownership Rules And Other Rules
Pursuant To Section 202 Of The
Telecommunications Act Of 1996

MM Docket 01-325

Cross-Ownership Of Broadcast
Stations And Newspapers

MM Docket 01-317

Rules And Policies Concerning
Multiple Ownership Of Radio
Broadcast Stations In Local Markets

MM Docket 01-244

Definition Of Radio Markets

RICHMOND CONVENTION CENTER

RICHMOND, VIRGINIA

FEBRUARY 27, 2003

[Signature] 2

TABLE OF CONTENTS

	<u>PAGE</u>
About THE AMHERST ALLIANCE	1
Thank You, FCC	4
THREE KEY POINTS	4
1. The FCC-Commissioned Studies:	4
(A) Amherst's February 1 Written Comments	4
(B) VCPP's February 27 Written Testimony	5
2. Economics Isn't Everything	7
3. The Mandate Of Section 202(h), 1996 Telecommunications Act	8
Conclusions	10

THE AMHERST ALLIANCE hereby submits its Written Testimony for the Richmond Field Hearings of the Federal Communications Commission (FCC).

The special Field Hearings are concerned with the package of pending Dockets on whether the FCC should retain, remove or expand its current restrictions on maximum media ownership.

About THE AMHERST ALLIANCE

THE AMHERST ALLIANCE is a Net-based, nationwide citizens' advocacy group, named after the town where it was founded in 1998: Amherst, Massachusetts. The Amherst Alliance engages in both regulatory and legislative advocacy, before both the FCC and Congress, to promote Low Power FM Radio in particular **as** well as greater media diversity in general.

During its earliest years, 1998 and 1999, Amherst focused primarily on supporting FCC action to establish a Low Power **FM (LPFM)** Radio Service. These efforts succeeded when the FCC established this Service in January of 2000.

Amherst then spent all of 2000 fending off a Congressional counterattack. The outcome of this second battle was enactment of anti-LPFM legislation by a "lame duck" Congress, using **an** Appropriations bill "rider" that avoided both Committee Hearings **and** a *floor* vote in the Senate. Still, Amherst was able to block the worst aspects of the legislation: through action in the House of Representatives, the legislation was narrowed from **a** total ban on LPFM to a ban on LPFM in most large metropolitan areas.

Since 2000, The Amherst Alliance has broadened its focus to encompass a much broader range of media regulation issues. Amherst's emerging positions have included:

- o Opposition to the In Band On Channel (IBOC) version of Digital Radio (a matter on which Amherst was originally neutral)
- o Development and advocacy of proposals *to* restrain, and in time reduce, the proliferating number of FM "satellators", and other long distance FM translator stations
- o Opposition to higher royalties, and more burdensome reporting requirements, for small Internet broadcasters

And

- o Support for retaining, *and* expanding, current restrictions on media ownership

In addition to developing and articulating its own additional positions on media regulation issues, The Amherst Alliance also began *to* build coalitions with other institutions and individuals. The results, in addition to Joint Written Comments in several FCC proceedings, have also included the preparation and filing of 2 multi-party Petitions For Rulemaking ... a multi-party Request for an Environmental Impact Statement (EIS) ... and a multi-party Petition **For** Reconsideration.

- o An April 12, 2002 Petition For Rulemaking to set new policies for spectrum re-allocation on the FM band. *9 parties*, led by The Amherst Alliance. Due *to* the emergence of 2 retroactive signatories, there are now *11 parties*.
- o An April 12, 2002 Petition For Rulemaking *to* initiate testing and evaluation of Eureka-147 technology and other alternatives *to* IBOC Digital Radio. *10 parties*, led by The Amherst Alliance. Due *to* the emergence of 2 retroactive signatories, there are now *12 parties*.

- o A July IS, 2002 Request for **an** Environmental Impact Statement (EIS), in Docker 99-325, to be prepared and assessed prior to any implementation of IBOC Digital Radio. *9 parties*, led by The Amherst Alliance. Due to the emergence of 2 retroactive signatories, there are now *11 parties*.

And

- o **An** October 25, 2002 Petition For Reconsideration, in Docket 99-325, which seeks revocation or suspension of the Commission's approval of "interim" IBOC broadcasting. *34 parties*, led by The Amherst Alliance. Due to the emergence of 5 retroactive signatories, there are now *39 parties*.

Unfortunately, the Commission has not yet responded in **any** way, either positively or negatively, to *any* of these **4** coalition initiatives. The spectrum re-allocation spectrum Petition For Rulemaking remains in PRM02ET, while the Digital Radio Petition For Rulemaking sits in limbo in PRM02MB. **So far**, there has also been a lack of Commission action on either the **EIS** Request **or** the Petition For Reconsideration in Docket 99-325.

Nevertheless, the multiplying number of coalition partners offers proof that The Amherst Alliance -- in its 5th year of life -- is still on the move.

During today's Field Hearings, The Amherst Alliance is represented by Wesle AnneMarie Dymoke of Providence, Rhode Island. She is a National Coordinator Emeritus of The Amherst Alliance. In addition, she is a founder of PROVIDENCE COMMUNITY RADIO: the first non-profit organization in history to be chartered exclusively for the purpose of seeking a Low Power FM license.

Wesle has several years of experience, with both broadcast operations and programming content, at various Non-Commercial Educational (NCE) radio stations.

She is also experienced as an agent for musicians and other performing artists,

Thank You, FCC

The Amherst Alliance *commends* and congratulates the Federal Communications Commission for choosing to initiate these Field Hearings. We offer particularly hearty congratulations and commendations to FCC Commissioner Michael Copps, and his hard-working staff, for their trailblazing efforts to make these Hearings a reality.

We urge the Commission to turn these Richmond Field Hearings, designed to solicit input from “grassroots” citizens Outside The Beltway, into the start of a new tradition at the FCC.

THREE KEY POINTS

In today’s Written Testimony, Amherst will focus on THREE KEY POINTS.

■ – The FCC-Commissioned Studies

(A) Amherst’s February 1 Written Comments. We incorporate by reference, into the record of these specific Field Hearings, the February 1, 2003 Written Comments in the 4 media ownership Dockets.

We note, and emphasize, that these Written Comments respond explicitly, and comprehensively, to FCC Chairman Michael Powell’s call for public comment on the numerous FCC-commissioned studies for the media ownership Dockets.

Amherst concluded that these FCC-commissioned studies fail to provide, and indeed fail to even *begin* to provide, a sound justification for removing or relaxing the FCC's few remaining restrictions on media ownership. In general, Amherst found the studies to be interesting and, in some cases, even provocative. However, if asked to carry the intellectual weight of justifying further media ownership deregulation, Amherst generally found **the** studies be incomplete, and/or unclear, and/or irrelevant, and/or overly narrow in focus, and/or even misleading, for this purpose.

Amherst found particularly disquieting an FCC-commissioned "study" which claimed to report on the level of competition in the radio broadcasting industry, but did so by rolling together -- into a single, disaggregated mass -- 40 years of data, obscuring in the process the extremely rapid rate of media consolidation during the 6 years since enactment of the 1996 Telecommunications Act.

A "study" which buries 6 years of truly radical change beneath **34** years of relative stability is a thoughtless analysis at best, and a deliberately deceptive analysis at worst. Along with some of the other FCC-commissioned studies, it begs to be redone.

We urge the FCC Commissioners and staff to read our February 1 Written Comments for more details.

(B) VCPP's February 27 Written Testimony. We must admit that our February 1 *Written* Comments fail **to make** one compelling point which **is** found in the February 27 Written Testimony, prepared for today's Field Hearings, of **VIRGINIA CENTER FOR THE PUBLIC PRESS (VCPP)**.

VCPP, which is based here in Richmond, stresses in its Written Testimony that *none* of the FCC-commissioned studies take into account, in *any* manner, the foreseeable impact on media consolidation of the In Band On Channel (IBOC) version of Digital Radio. The Federal Communications Commission has been considering IBOC Digital Radio, and planning its implementation, for several years: far enough back in time that the authors of the FCC-commissioned studies must have been, or at the *very* least should have been, aware of this technology and its foreseeable impact on media consolidation.

In discussing *its* approval of “interim” IBOC radio broadcasts -- under a Docket 99-325 Order of October 11, 2002 -- the FCC’s Commissioners openly acknowledged that one major “tradeoff”, for the purported IBOC benefit of supposedly enhanced audio quality, would be inevitable interference with some of ~~the~~ existing signals from *some* of the existing radio stations. Now that “interim” IBOC broadcasts are starting to occur in the “real world”, **Amherst**, VCPP and others are starting to hear reports of **such** massive interference -- extending even to such “blow torch” stations as WOWO of Indiana. We are now investigating whether all of this interference is occurring outside of “protected contours”, as the Commission has anticipated, or whether even “protected contours” are being breached by IBOC interference.

In any event, VCPP’s point is that even the FCC has acknowledged that IBOC broadcasts will frequently result in *fewer* choices on the radio dial, although the reduced number of stations will supposedly have more audible signals. Given that even the FCC anticipates “extra-contour interference” from IBOC, sometimes resulting in major

shifts in market share ... and given that “real world” reports are starting to confirm the accuracy of this expectation ... and given further that even some “*intra*-contour interference” may occur ... it is clear that the proverbial “elephant in the living room” has somehow been overlooked by *every single one* of the FCC-commissioned studies on media ownership and media consolidation.

In short: VCPP has provided yet another compelling reason to conclude that the FCC-commissioned studies *do not* constitute an intellectually sturdy foundation for further media ownership deregulation.

2. Economics Isn’t Everything

As we also stated in our February 1 Written Comments, The Amherst Alliance is concerned by the virtually exclusive emphasis, in many FCC documents, on economics as the sole factor to be considered in deciding whether existing media ownership restrictions should be retained, removed or expanded.

Careful considerations of economic factors in general, and accurate assessments of the level of current marketplace competition in particular, are obviously both relevant and important in making this decision. Nevertheless, economic matters are not the *only* factors which merit consideration: they are not even the single most important factor. *The single most important factor*, in *our* opinion, is whether current or anticipated levels of media consolidation impede in any way the free flow of ideas, which is fundamental for maintaining our representative democracy.

“Liberty and prosperity” is the official motto of the State of New Jersey -- and New Jersey has it right. *First* secure liberty . . . *then* secure prosperity.

That is what the FCC should do.

For additional discussion of important *non-markerplace* values, which merit respect despite their lack of direct convertibility into dollars and cents, we hereby incorporate by reference the February 1 Written Comments, in the **4** media ownership Dockets, of the PROMETHEUS RADIO PROJECT. These Written Comments contain much valuable food for thought -- some of which we wish we had thought of ourselves.

3. The Mandate Of Section 202(h), 1996 Telecommunications Act

Finally, we wish *to* commend, for the Commission’s careful consideration, the January 31, 2003 Legal Analysis that was prepared for The Amherst Alliance by Don Schellhardt, Esquire. Don *is* an experienced legislative and regulatory attorney, **as** well as a founder and National Coordinator Emeritus of The Amherst Alliance. His Legal Analysis was attached, as an Appendix, to the previously referenced February 1 Written Comments by Amherst.

Don’s Legal Analysis concerns Section 202(h) of the Telecommunications Act of **1996**. This is the statutory language which requires the FCC to reconsider its standing media ownership regulations every 2 years.

Don’s Legal Analysis dispels 2 common misconceptions about *the* nature of this statutory *mandate*. These 2 conclusions are worth reiterating here.

First, contrary to widespread belief, there is *no* burden *of proof* placed on Advocates of the status quo. There is *no* statutory presumption that any given step toward media ownership deregulation should occur unless the weight of the evidence is contrary. Nor is there a statutory presumption in the other direction. The FCC is directed to examine the evidence -- period -- without making a presumption either for or against media ownership deregulation.

Second, also contrary to widespread belief, the mandate in Section 202(h) is fluid. The Commission has been directed by Congress to **look** at its media ownership regulations every 2 years, regardless of whatever it may have decided to do 2 years before. Further, after taking this **look**, the Commission is told to “repeal or *modify*” its media ownership regulations, in light of the social and marketplace conditions prevailing at the time. “*Modify*”, obviously, is an open-ended term, which **can** encompass anything other than repeal -- ranging from partial relaxation of the media ownership restrictions all the way to comprehensive tightening of the restrictions.

In short, Section 202(h) of the 1996 Telecommunications Act of 1996 makes no presumptions and sets no “burden of proof”. Indeed, it even wipes the existing slate clean every 2 years. Whatever the Commission decided to do 2 years ago, it can choose to undo now, if the overall evidence justifies that change. Whatever it chooses to do during *this* round of review can be reversed or revised 2 years later. Movement toward deregulation or re-regulation is legally permissible during biennial reviews.

With Section 202(h), as with baseball: “There’s always next year.”

More precisely, there’s always the *next* biennial review.

Conclusions

For the reasons we have set forth in this Written Testimony, and in related regulatory filings, The Amherst Alliance urges the Federal Communications Commission to either retain *or expand its* current media ownership restrictions. Further, given the cited limitations and distortions of the FCC-commissioned studies for the media ownership Dockets, under no circumstances should the Commission consider further relaxation of its media ownership restrictions until and unless new studies have been initiated, completed and assessed.

For further information about this Written Testimony, please contact:

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